

Before the
Federal Communications Commission
WASHINGTON, D.C. 20554

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In the Matter of

Elehue Kawika Freemon and
Lucille Freemon
Complainants,
CC Docket No. 94-89
v

File No. E-90-393

American Telephone and Telegraph Company
Defendant.

DOCKET FILE COPY ORIGINAL

Motion for Late filing of Appellants Reply to
AT&T Opposition and Exceptions

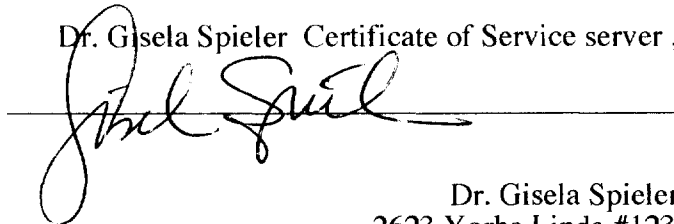
In pursuant to CFR. 1.204 the appellant requests the following information to be entered into the "Appellants Reply to AT&T Opposition and Exceptions" for complaint in above caption Elehue K. Freemon to the Commission's Review Board by Dr. Gisela Spieler Certificate of Service server.

During the required filing time CFR. 1.302 (g) Mr. Freemon's assistant, Dr. Gisela Spieler, who volunteers her help, had a medical complication following her surgeries of December 21, 1994 and January 21, 1995. This necessitated an additional surgery on March 28, 1995 which rendered her unable to work.

Dr. Gisela Spieler's participation has been invaluable to this case. Her background knowledge of this case, secretarial skills and the computer hardware available to her are irreplaceable at this time and can not be found in Big Bear Lake California, the residence of Mr. Freemon.

The following medical information will assist the Commissions Review Board to show the cause to be in good faith in accepting this Late filing of Appellants Reply to AT&T Opposition and Exceptions as a pro se appellant.

Dr. Gisela Spieler Certificate of Service server ,



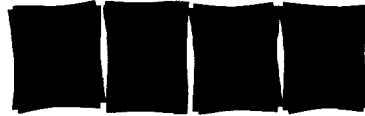
Dr. Gisela Spieler
2623 Yorba Linda #123
Fullerton, CA 92631

April 6, 1995

No. of Copies rec'd
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SANTA MONICA ORTHOPAEDIC



AND SPORTS MEDICINE GROUP

A Medical Corporation

John M. Adams, Jr., M.D. Kevin M. Ehrhart, M.D. Ronald J. Govey, M.D. Todd T. Grant, M.D.
Kenton S. Horacek, M.D. T. Michael Lain, M.D. Bert R. Mandelbaum, M.D.

APRIL 6, 1995

TO WHOM IT MAY CONCERN:

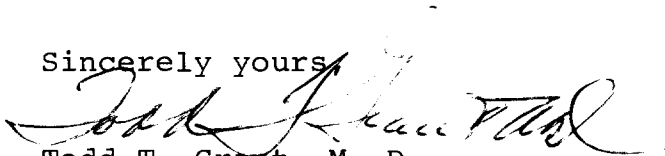
RE: Spieler, Gisela

The above patient is under my medical care for a knee injury.

Ms. Spieler underwent surgery on 12/21/94, 1/21/95 and 3/28/95.

If further information is needed, please feel free to contact my office.

Sincerely yours,



Todd T. Grant, M. D.

/msb

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Elehue Kawika Freemon and
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American Telephone and Telegraph Company
Defendant.

Appellant's Reply to AT&T's Opposition and Exceptions

1. In pursuant to CFR. 1.302(g) the appellant submits the following reply to AT&T's opposition to the FCC Review Board in response to appellants appeal against the Initial Decision of Administrative Law Judge Walter C. Miller, released February 24, 1995.

2. As shown in the appeal the Initial Decision [ID] by Judge Walter C. Miller is quite flawed, prejudiced, contradictory, and full of extra judicial bias. The ID eliminates any attempt for the search of the truth in regards to the Commission's Hearing Designation Order issued: August 12, 1994 [HDO12] and distracts the Commission from the realities of this case. For these reasons, the Appeal should be granted.

Statement of AT&T's Opposition

3. AT&T apparently lead Ms. Nancy Zolnikov in her Answer interview (without cross examination). However not being able to control her answers at the AT&T deposition, she admitted that the allegations against AT&T were in favor of the appellants. See Nancy Zolnikov AT&T deposition on November 7, 1994, Judges Exhibit 3, page 67, line 13 through page 73, line 10 (At page 72, line 7, Mr. Elehue K. Freemon

"Q. All right. And then you let them talk?", at page 72, line 8 **Ms. Nancy Zolnikov's replies " A. Yes "**, at page 72, line 9 to 19 Ms. Nancy Zolnikov describes how she let the conversation continue for an undetermined amount of time when she stated while she was busy helping " other customers. " at page 72, line 14,). See FRE 803 (5) when cross examined.

4. The answers provided by Ms Nancy Zolnikov at AT&T's deposition, have answered the six issues listed in the Commission's Hearing Designated Order, with the main issue being HDO12 page 3, IV., subsections (1, 2) **did a conversation occur between the complainants Mr. Elehue K. Freemon and Mrs. Lucille K. Freemon, the answer is Yes.** See Judges Exhibit 3, page 67, line 13 through page 73, line 10 .

5. Ms. Nancy Zolnikov has contradicted Mr. Sharpe's testimony in Judges Exhibit 3, page 23, line 16 to line 19, "flash back" statement and "gone to heaven" at Judges Exhibit 3, page 81, line 1 to line 5 and line 22 to line 25. See Mr. Sharpe's testimony stated at AT&T's Ex. 4 (B), .

6. It is also not in dispute that the medical emergency described to the 911 message taker and to Mrs. Lucille K. Freemon originated from Ms. Nancy Zolnikov's actions and not from Mrs. Lucille K. Freemon's .

7. However it is in dispute what was stated to the 911 message taker and Mrs. Lucille K. Freemon by Ms. Nancy Zolnikov during this incident. This paragraph is in response to HDO12 page 3, subsection (3, 4). See [HDO12 page 2, footnote 6.

8. Neither AT&T nor Judge Miller have proven that there was a medical emergency in conjunction with the rejected clinical hospital reports. (In fact* throughout this case they have avoided to use most material facts pertinent to this case.) The drug report contradicts the psychologist's report of an over dose of pills and alcohol misuse, and shows that Mr. Elehue K. Freemon was within normal limits for his overall condition. This paragraph is in response to HDO12 page 3, subsection (4,6). See *HDO12, page 2, footnote 6.

9. See: six issues in Commission's hearing designated order [HDO12, page 3, IV.] and rejection of Commissions order by ALJ Miller of the 911 transcripts HDO12, page 2, footnote 6.¹

10. With the exception of HDO12 page 3, subsection (5) the complainants had hoped to show to the court the violation of civil rights by the police and state hospital that followed the false arrest of Mr. Elehue K. Freemon was not due to their negligence but due to AT&T's policies. This arrest caused longer term emotional trauma, the reasons for loss of Mr. Elehue K. Freemon business and future job opportunities in his field. Medical evidence from Portland Seventh Day Adventist Hospital was rejected by Judge Miller. This paragraph is in response to HDO12 page 3, subsection (5,6).

Questions of Law

11. AT&T's question one:

12. Whether Section 705 of the Communications ACT, 47 U.S.C. § 605, applies to the interception and disclosure of wire (i.e., Telephone) communications?

13. AT&T's suggested answer: No.

14. **Appellants reply to AT&T's question one: Yes.**

15. AT&T's question two:

16. Whether, consistent with Section 217 of the Communications ACT, AT&T may be held liable for act of an employee that are outside the scope of his employment?

17. Suggested Answer: No

18. **Appellants reply to AT&T's question two: Yes**

¹ Ohio Bell Telephone Co., 301 U.S. 292 [7], P.302 Concealment of evidential facts from the hearing and commission.

19. AT&T's question three:

20. Whether the Formal Complaint in this proceeding, filed more than six months after the complainants' informal complaint was returned unsatisfied by AT&T, and more than two years after the alleged incident, is barred by statute of limitations established by Section 415 of the Communications ACT ?

21. Suggested Answer: No

22. **Appellants reply to AT&T's question three: Yes**

Argument

23. **Appellants reply to AT&T's question one: Yes.**

24. The Appellants have cited both Section 705 and 18 U.S.C. § 2511 (2) (a) (i) etc. to the Commission in its past pleadings and have relied on the Commission's area of responsibilities given to them by congress. See Brief for the Common Carrier Bureau, issued December 6, 1994 and Comment in Response to AT&T's Motion for Summary Decision, issued December 6, 1994, pages 3, I. Disputed Factual Issues Exist Regarding the alleged Section 705 Violation II., The Complainants Have Stated a Claim Under Section 705 . to pages 7.

25. **Appellants reply to AT&T's question two: Yes**

26. AT&T's **Privacy of Communications** Text; AT&T Evidentiary Ex. 4, page 1, (P.5), paragraph 5 and 6, mentions that there are **two exceptions** when applying these two paragraphs; " except (as authorized by the customer [Mr. Elehue Freemon] or (in paragraph 5)) as required in the proper management of the business. ", in paragraph 6. [Brackets] and insert added.

27. In the management of the business, emergency calls AT&T OSOP manual,

28. " Division C Section 21 March 1980; 3. Principles of Handling Emergency Calls;
3.01 The Most Significant Items in Handling Emergency Calls Are:

29. Take whatever action appears necessary to give the service needed, deviation from operating procedures when necessary. "

30. " Take what ever action is necessary ... " does not limit but gives Ms. Nancy Zolnikov unlimited options to alter any normal procedures and therefore disregard any of AT&T's written procedures for conducting business in general, any emergencies and possibly disobey laws of the U.S. (though she may be unaware of such laws and regulations due to AT&T's training and policy) and gives her total freedom in the physical operation of the her console to accomplish her emergency tasks.

31. The permission for action was not given to AT&T by their customers, in this case the complainants, but by the Corporation of AT&T.

32. Appellants reply to AT&T's question three: Yes

33. The Appellants have relied on the Commission in its area of responsibilities given to it by congress. See Comment in Response to AT&T's Motion for Summary Decision, issued December 6, 1994, pages 7, III. The Presiding Judge's Consideration of the Issues Specified by the Commission in its Hearing Designation Order is Not Time Barred by Section 415 (b) of the Commission Act.

Conclusion

34. In conclusion AT&T has avoided the Commission's Hearing Designation Order [HDO12] and so has ALJ Miller. The appellants believe that after this hearing it should be recognized that AT&T will not be truthful, even after their own operator has settled much of the disputed material facts in this case.

35. The appellants also believe that the issues of Section 705 of the Communications ACT, 47 U.S.C. § 605, AT&T's liability for an action of their own employee and the issue of this case being time barred has been addressed properly by the appearance of the Commission's Hearing Designation Order to have this case heard.

36. Under these circumstances there is sufficient basis for granting the appeal and denying AT&T's request for dismissal.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Elehue K. Freemon', written in a cursive style.

Elehue K. Freemon Appellant

General Delivery

Big Bear Lake, CA, 92315

April 6, 1995

Certificate of Service

I, Dr. Gisela Spieler, hereby certify that a true copy of the foregoing Motion to "Late filing of Appellants Reply to AT&T's Opposition and Exceptions" and "Appellants Reply to AT&T's Opposition and Exceptions" from March 23, 1995 was served on the April 6, 1995 by U.S. mail, postage prepaid upon the parties listed below:

Thomas D. Wyatt
Chief, Formal Complaints and Investigations Branch
Common Carrier Bureau
Federal Communications Commission
1250 23rd Street, N.W. - Plaza Level
Washington, D.C. 20554

Keith Nichols, Esq.
Enforcement Division
Common Carrier Bureau
Federal Communications Commission
Washington, D.C. 20554

Secretary of FCC
Attention: Review Board
Federal Communications Commission Review Board or
Commissioner
FCC
2025 M Street, N.W.
Washington, D.C. 20554

Peter H. Jacoby
295 N. Maple Ave., Room 3245 F3
Baskin Ridge, N.J. 07920

Lucille K. Freemon
730 W. Columbia
Long Beach, C.A. 90806
(by hand)

Elehue K. Freemon
General Delivery
Big Bear, Lake, CA 92315

Dr. Gisela Spieler